

**Meeting of the Central Valley Flood Protection Board
December 3, 2010**

Committee Report

Title 23 Tier 1B Draft Revisions

Presented by Staff: Curt Taras

Legal Counsel: Deborah Smith, Ward Tabor, Robin Brewer

Board Committee Members: Emma Suarez, Butch Hodgkins

Item

Authorize submission of Title 23 Tier 1B Revisions of the Board's Regulations which address new California Laws granting delegated authority to the Executive Officer for permit approvals and enforcement actions to the Office of Administrative Law.

Background

In 2009, Assembly Bill 1165 amended the California Water Code related to flood protection. The Bill made changes in California Law to allow the Board to delegate, by regulation, authority to the Executive Officer to issue permits and conduct enforcement actions. As a result of this legislation, Board Staff has written proposed revisions to the California Code of Regulations, Title 23 Waters, Division 1 Central Valley Flood Protection Board. These revisions are identified as Tier 1 B revisions and are ready for the Board to submit to the Office of Administrative Law for publishing and public comment.

The draft Tier 1B regulations were last presented in the September 27th Board packet. At that meeting the board authorized submission of the draft regulations regarding ex-parte communications and general terminology cleanup to the office of Administrative Law. Since then Board staff has worked with legal counsel and Board Members Suarez and Hodgkins to refine the remaining regulation revisions. The result of this work are the following Tier 1 B regulation revisions ready for Board authorization for submission to the Office of Administrative Law.

Regulations Revision Status

Regulations Regarding Delegations - Ready for Board Authorization

Regulations Regarding Enforcement Actions – Ready for Board Authorization

Regulations Regarding Reconsideration – Ready for Board Authorization

Regulations Regarding Ex- Parte Communications – Authorized for OAL

Regulations Regarding General Cleanup – Authorized for OAL

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING DELEGATED AUTHORITY**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 2, Sections 4 and 5 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 2. Definitions and Delegations**

§ 4. Definitions.

(ii) State Plan of Flood Control. “State Plan of Flood Control” shall have the same meaning as defined in subdivisions (e) and (j) of section 5096.805 of the Public Resources Code, including the state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the Water Code, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water Code for which the board or the department has provided the assurances of nonfederal cooperation to the United States.

(~~h~~ij) Stream. “Stream” means...[no substantive changes to text]

(~~jj~~kk) Top of Bank. “Top of bank” means...[no substantive changes to text]

(~~kk~~ll) Toe of Bank. “Toe of bank” means...[no substantive changes to text]

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8361, 8370, 8521, 8522, 8523, 8581, 8608, 8630 and 8710, Water Code. Government Code Section 65007. Public Resources Code 5096.805.

§ 5. Delegations.

(a) For the purposes of this division, all duties of the board, including the review and approval of encroachment permit applications, are hereby delegated to the Executive Officer, with the exception of the following:

~~(1) Matters that require the issuance of a permit;~~

(1) Permits or other approvals of encroachments that significantly affect any element of the State Plan of Flood Control or other adopted plan of flood control.

(2) Permits or other approvals of encroachments for which the board has not received written comments from the U.S. Army Corps of Engineers pursuant to 33 C.F.R. section 208.10.

(3) Permits or other approvals of encroachments requiring U.S. Army Corps of Engineers 33 U.S.C. Section 408 approval.

(4) Permits or other approvals of encroachments which may have, in the judgment of the Executive Officer or Chief Engineer, more than a de minimus hydraulic impact to an adopted plan of flood control, including but not limited to increases in water surface elevation, lack of adequate freeboard, inability to convey design discharge, alteration of flow velocities or directions, increased scour, or expansion of the geographical floodplain or floodway inundation.

(5) Permits or other approvals of encroachments which may have, in the judgment of the Executive Officer or Chief Engineer, adverse geotechnical impacts to an adopted plan of flood control, including but not limited to increases in under seepage or through seepage, slope-stability issues, increased phreatic pressures, and static or dynamic loading.

(6) Permits or other approvals of encroachments for habitat restoration, environmental restoration, or environmental mitigation.

(7) Permits or other approvals of encroachments for which a formal written protest has been filed pursuant to Section 12.

(8) Permits or other approvals of encroachments which require a variance, as defined in Section 11.

~~(2)~~(9) Matters or applications which, in the judgment of the Executive Officer, may be controversial, based on substantial public concern, or for which the Executive Officer has received substantial negative public comment.

~~(3)~~(10) Matters or applications which, in the judgment of the Executive Officer, may involveing significant policy considerations.

~~(4)~~(11) Matters or applications requiring the preparation of an environmental impact report by the board.

~~(5)~~(12) Matters or applications involving residential developments, as defined in Section 113.

~~(6)~~(13) Matters or applications involving surface mining except extensions of time for existing operations.

(b) Subject to subsection (a), the following types of encroachments, when in compliance with this division and the board's obligations to the U.S. Army Corps of Engineers, do not significantly affect any element of the State Plan of Flood Control or other adopted plan of flood control:

(1) Pipelines, conduits, and overhead utilities;

(2) Irrigation and drainage ditches;

(3) Septic systems;

(4) Retaining walls;

(5) Fences and gates;

(6) Private, non-commercial boating facilities;

(7) Water wells;

(8) Patrol roads and access ramps;

(9) Orchards, landscaping and vegetation;

(10) Bicycle, pedestrian and equestrian trails;

(11) Stairs and steps;

(12) Replacement of an existing permitted encroachment without an increase in scope or size;

(13) Above ground encroachments installed more than fifteen (15) feet landward of the landside levee toe.

(c) For all encroachment permit applications delegated to the Executive Officer pursuant to subsections (a) and (b) above, a short summary of the project and the proposed action on the permit shall be posted on the board's website for thirty (30) days prior to approval of the permit. During the thirty (30) day posting period, the Executive Officer shall provide the public a reasonable opportunity to comment on the proposed action. The Executive Officer shall not be required to respond to such comments or change the proposed action based upon such comments.

(d) The Executive Officer shall make periodic reports to the board regarding encroachment permit applications acted upon pursuant to the delegated authority in subsection (a).

~~(b)~~(e) The Executive Officer shall have authority to approve notices of exemption, initial studies and negative declarations, notices of preparation, requests for shortened review, and notices of determination prepared pursuant to CEQA. The Executive Officer may conduct public hearings on any matter identified in this subsection. The Executive Officer may distribute draft environmental impact reports.

(f) The Executive Officer may authorize or direct work in response to emergencies or situations that present an imminent threat to public safety in accordance with Section 17.

(g) The board delegates to the Executive Officer the authority to take action to remove or modify encroachments on levees, channels, and other flood control works pursuant to Water Code section 8709.4(c) and the authority to issue Cease and Desist Orders pursuant to Water Code section 8709.5(a) in the manner described in article 4 of this division.

~~(e)~~(h) The board may, by resolution or written agreement, delegate other duties and responsibilities to the Executive Officer, the Director of the department, or others, with the authority to re-delegate.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8581, 8610.5, and 8710, Water Code.

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 7, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING DELEGATED AUTHORITY**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 7, Section 109 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 7. Review Rights**

§ 109. Right of Review of Delegated Authority.

Any person or public agency having an interest in a decision made by the Director of the department or the Executive Officer of the board pursuant to any delegation by the board, including those delegations in Section 5 and any other delegation of authority has the right to review by the board in accordance with the requirements of section 12. Adversely affected persons have the right to present arguments to the board in person or by a designated representative at a regularly scheduled board meeting [in accordance with section 110](#).

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8609 and 8710, Water Code.

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 4, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING ENFORCEMENT ACTIONS**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Modify Article 4 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 4. Enforcement Actions**

ARTICLE 4. ENFORCEMENT ACTIONS

§ 20. Purpose and Authority.

(a) The board has authority pursuant to the Water Code to require permits and enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including but not limited to standards for encroachments, construction, vegetation, and erosion control measures. In addition, the board has enforcement authority under Water Code sections 8709.5 and 8709.6 to issue cease and desist orders, the violation of which may subject the violator to fines or penalties pursuant to Water Code section 8709.7.

(b) Examples of enforcement actions available to the board include administrative and civil actions, such as the following:

_____ (1) Notice of Violation;

_____ (2) Cease and Desist Order;

_____ (3) Restoration Order;

_____ (4) Permit revocation;

(5) The commencement of a civil lawsuit, including civil penalties.

(c) The board delegates to the Executive Officer the authority to take action to remove or modify encroachments on levees, channels, and other flood control works pursuant to Water Code section 8709.4(c) and the authority to issue Cease and Desist Orders pursuant to Water Code section 8709.5(a) in the manner described in this article.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8615, 8617, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

§ 21. Maintenance Activities.

(a) In the performance of maintenance activities as defined in section 4(u), the department, local maintaining agency, or designated representatives of the board may remove unpermitted abandoned property that interferes with maintenance or inspections after notification by the Executive Officer.

(b) Prior to any removal allowed under (a), the Executive Officer shall notify the landowner or owner of the unpermitted abandoned property by one of the following methods: in person, phone, e-mail, or U.S. mail. If the landowner or owner of the abandoned property cannot be located after reasonable efforts, a notice may be posted on the property for a minimum of five (5) calendar days prior to removal. The posted notice shall be clearly visible, shall provide a board contact name, phone number, e-mail address, and mailing address, and shall state that the owner may contact the board to object to such removal. The notice shall also state the date by which removal will occur if no objection is made.

(c) If a timely objection is made, no removal shall take place until the Executive Officer has provided the objector a reasonable opportunity to present reasons why the items should not be removed. The Executive Officer shall provide a written decision, which may be reviewed by the board pursuant to section 110.

(d) For purposes of this section, “abandoned property” shall mean any structure, material, or object that appears to a reasonable person to have been discarded, cast aside, dumped, neglected, vacant, or unoccupied. Examples of abandoned property may include, but are not limited to the following: refuse, vegetation, or structures such as stairs, fences, or boat docks that have fallen into a state of disrepair.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8615, 8617, 8704, 8708, 8709, 8709.4, 8710, and 8719, Water Code.

§ 22. Emergency Impairment Response Authority.

(a) In addition to the emergency authority in section 17, the Executive Officer is delegated the authority to authorize the removal or modification of permitted or unpermitted encroachments on levees, channels, and other flood control works that present an imminent threat to public health and safety without prior notice, order, or hearing.

(b) The Executive Officer shall attempt to give the landowner or owner of the encroachment prior notice when possible, and shall only take such actions as are reasonably necessary to abate the immediate threat to public health and safety.

(c) The Executive Officer shall report any action taken pursuant to this section to the board at the first reasonably available opportunity.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

§ 23. Notice of Violation.

(a) An enforcement investigation may be conducted when board staff is aware of activities that may impair the flood control system, or any activity that may constitute a violation pursuant to subsection (b). An enforcement investigation may include, but is not limited to, document review, site visits, interviews, and public agency input to determine if violations under the jurisdiction of the board exist.

(b) If the Executive Officer believes that the results of an enforcement investigation so warrant, the Executive Officer may institute an administrative enforcement action pursuant to Water Code section 8709.5 by giving a Notice of Violation to the landowner, person, or public agency (referred to hereafter as the "respondent") that is responsible for any activity described in Water Code section 8709.5(a), including but not limited to the following:

- _____ (1) Undertaking or threatening to undertake any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board;
- _____ (2) Owning, undertaking, or maintaining any work in violation of or inconsistent with any condition of any permit previously issued by or subject to the jurisdiction of the board; or
- _____ (3) Any violation of any requirement in Part 4 of Division 5 of the Water Code, including but not limited to:

- (i) Owning, undertaking, or maintaining any work that requires a permit or other approval from the board without securing such permit or approval;
- (ii) Owning, undertaking, or maintaining any work in violation of Title 23, Division 1 of the California Code of Regulations; or
- (iii) Owning, undertaking, or maintaining any work that is inconsistent with applicable federal regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such regulations.

(c) The Notice of Violation shall be given in the manner set forth in Water Code section 8709.5(b) and shall state:

- (1) A description of the work subject to enforcement;
- (2) Any corrective action that the Executive Officer determines may be necessary to avoid an unreasonable impact on public safety;
- (3) The deadline to complete corrective action or otherwise respond to the notice;
- (4) Staff contact name, address, and phone number; and
- (5) A statement alerting the respondent that the described work or activity shall immediately cease or the respondent may receive a cease and desist order, the violation of which may subject the respondent to fines or penalties.

File copies of the written confirmation or notice shall be provided to the local levee maintaining agency and the levee inspector. Failure to provide copies of the notice to the local maintaining agency and the levee inspector shall not be grounds for invalidating the Notice of Violation.

(d) “Unreasonable impact on public safety” shall mean a threat of structural failure of the levee, flooding, channel obstructions, floating debris, or other adverse impact on any adopted plan of flood control. Conditions imposed in the Notice of Violation or Cease and Desist Order that are necessary to avoid an unreasonable impact on public safety may include, for example, removal of the encroachment, the addition of fill material, the erection of barricades, and/or the compliance with board standards and permit conditions.

(e) “Lawful existing encroachment,” as used in Water Code section 8709.4(a), shall mean an encroachment for which the board has previously issued a valid permit or otherwise authorized by written instrument approved by the board.

(f) The respondent may request a meeting or an inspection to determine compliance with a Notice of Violation. If the Executive Officer determines that no further action is necessary or appropriate, the respondent shall be notified that the file is closed.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

§ 24. Cease and Desist Orders Issued by the Executive Officer.

(a) The Executive Officer may issue a Cease and Desist Order pursuant to Water Code section 8709.5 if the Executive Officer makes the determination required by Water Code Section 8709.5(a) and the respondent fails to respond to the Notice of Violation in a satisfactory manner.

(b) “Satisfactory manner,” as used in Water Code section 8709.5(b), shall mean a response which is made in the manner and within the deadline for compliance specified in the Notice of Violation, or within 30 calendar days if no deadline is given, and that meets the following:

- (1) Provides information sufficient to convince the Executive Officer that the activity specified in the notice does not meet the criteria of section 23(b); or
- (2) Provides information sufficient to convince the Executive Officer that the person or agency to whom the notice was directed is not the landowner and/or is not responsible for the violation; or
- (3) Provides information sufficient to convince the Executive Officer that the respondent has complied with all conditions and directives of the Notice of Violation and that no further action is necessary or appropriate.

(c) Pursuant to Water Code section 8709.5, the Executive Officer does not have the authority to issue a Cease and Desist Order that does the following:

- (1) Imposes conditions other than those necessary to avoid an unreasonable impact on public safety, as defined in section 23, above. If the order contains any valid conditions, the order and all valid conditions shall remain in full force and effect; or
- (2) Revokes a previously issued permit; or
- (3) Requires restoration. The term “restoration,” as used in Water Code section 8709.6(d), means work in excess of that required to eliminate an

unreasonable impact on public safety as defined in section 23, above, including, for example, work to re-establish an area to the condition it was in prior to the installation of an encroachment or other work. The term “restoration” shall also include environmental restoration work to re-create habitat lost by the construction of the encroachment.

If restoration is required, only the board may issue a Cease and Desist Order after a public hearing pursuant to section 25. Revocation hearings shall comply with the procedures in section 26.

(d) The Cease and Desist Order shall be effective upon its issuance and copies shall be served by certified mail as set forth in Water Code section 8709.5(d). “Immediately,” as used in Water Code section 8709.5(d), shall mean the Cease and Desist Order shall be served as soon as reasonably possible, but no later than two (2) working days after issuance.

(e) The respondent may request an inspection to determine compliance with a Cease and Desist Order issued by the Executive Officer. If the Executive Officer determines that no further action is necessary or appropriate, the respondent shall be notified that the enforcement action is closed. The respondent may contest the accuracy or validity of a Cease and Desist Order, or the Executive Officer’s decision regarding compliance with a Cease and Desist Order issued by the Executive Officer, by submitting a written protest within 30 calendar days in accordance with section 110.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

§ 25. Cease and Desist Order Board Hearing Procedures.

(a) If the Executive Officer believes that the results of an enforcement investigation so warrant, the Executive Officer may schedule a Cease and Desist Order hearing before the board pursuant to Water Code sections 8709.5 and 8709.6 for any of the reasons stated in section 23(b). The Executive Officer shall issue a Notice of Violation pursuant to section 23 prior to scheduling a Cease and Desist Order hearing before the board.

(b) Cease and Desist Order hearings shall be conducted pursuant to the evidentiary hearing procedures described in subsections (c)-(g) and (j) of section 13 and section 13.1 of these regulations with the following changes:

(1) The “applicant” shall be referred to as the “respondent”;

(2) The “application” shall be referred to as the “enforcement action”;

- (3) Notice of the hearing shall be served on the respondent by certified mail or hand delivery at least thirty (30) calendar days prior to the hearing. The notice shall contain all the information required by section 13(g), as well as describe the violation and identify the statute(s) or regulation(s) the respondent is alleged to have violated;
- (4) The written conclusions as required by section 13.1(h) need not include a discussion of the elements identified in Water Code section 8610.5(c)(1)-(4). The written conclusions required by section 13.1(h) may be satisfied by having the Executive Officer prepare a proposed order and written summary based on substantial evidence stating the factual and legal basis for the proposed order. The respondent shall be provided with a copy of the proposed order and written summary or staff report, as applicable, at least twenty (20) calendar days prior to the hearing. The respondent may submit a written statement of defense to the Executive Officer at least fifteen (15) calendar days prior to the hearing.
- (5) In addition to holding the hearing in the manner stated in section 13(e), a hearing may also be held by a hearing officer or a partial committee of the board. If the hearing is held before a hearing officer or partial committee of the board, the hearing officer or committee shall prepare the proposed order and proposed decision required by section 13(f) within thirty (30) calendar days of the conclusion of the hearing. The respondent shall be provided with a copy of the proposed order and proposed decision at least ten (10) calendar days prior to the board's consideration of the proposed decision.
- (6) Cross-examination shall not be allowed unless deemed appropriate by the President or appointed hearing officer.
- (7) Following the hearing, the board may do the following;

 - (i) Adopt the written findings and proposed order in the staff report; or
 - (ii) Make such changes to the written findings and proposed order in the staff report as it deems appropriate; or
 - (iii) Direct a board member, the Executive Officer, or board staff to make any such changes for subsequent adoption by the board pursuant to section 13.1(i). The respondent shall be provided with a copy of the proposed order and proposed decision at least ten (10) calendar days prior to the board's consideration of the proposed decision.

(8) The board decision shall include an order specifying the action that must be taken by the respondent, if any, which may include, but is not limited to:

- (i) Removal of the work;
- (ii) Alteration of the work;
- (iii) A restoration order;
- (iv) Implementation of environmental mitigation;
- (v) Filing an application for a permit pursuant to this division;
- (vi) Other terms and conditions the board may determine to be necessary, including but not limited to inspection by the board or its authorized representatives;
- (vii) An order that if the respondent does not comply with the decision within a specified amount of time, the board, local maintaining agency, authorized representatives of the board, or a contractor hired by the board may take abatement actions, such as physical removal, and the board may recover any costs incurred from the respondent;
- (viii) An order requiring the respondent to file data as requested by the board or its authorized representatives.

Note: Authority cited: Section 8571, Water Code, and Section 11400.20, Government Code. Reference: Sections 6253, 11125, and 11425.10, Government Code; and Sections 8534, 8560, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

§ 26. Permit Revocation.

(a) A valid permit issued previously by the board may only be revoked after the permittee is given fifteen (15) days' prior notice by certified mail or hand delivery of a hearing before the board, unless waived in writing.

(b) The board shall follow the hearing procedures in section 25(b), above, for permit revocation hearings.

(c) In addition to the notice requirements of section 25(b)(3), the notice shall describe any permit condition(s) that are the subject of the revocation hearing.

(d) The board may hold a single hearing to consider revocation and a Cease and Desist Order.

Note: Authority cited: Section 8571, Water Code, and Section 11400.20, Government Code. Reference: Sections 6253, 11125, and 11425.10, Government Code; and Sections

8534, 8560, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

§ 27. Nuisance and Civil Penalty Provisions.

The Water Code authorizes the board to commence and maintain a civil suit in the name of the people of the State at any time for the prevention or abatement of public nuisances, as well as to seek civil penalties for violations. A summary of the amount of potential civil penalties is set forth in Water Code section 8709.7. Examples of the penalties for some violations are as follows:

<u>Violation</u>	<u>Minimum Fine</u>	<u>Maximum Fine</u>
<u>Permit conditions</u>	<u>\$500</u>	<u>\$30,000</u>
<u>Intentional construction without permit</u>	<u>\$1000 per day</u>	<u>\$15,000 per day</u>
<u>Intentionally or negligently violating cease and desist order</u>	<u>No minimum</u>	<u>\$6000 per day</u>

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8709.7, 8710, and 8719, Water Code.

ARTICLE 4. ENFORCEMENT PROCEEDINGS

§ 20. Initiation.

~~(a) The General Manager may institute an enforcement proceeding by serving a notice by certified mail, return receipt requested, to the landowner or person (referred to hereafter as the "respondent") owning, undertaking or maintaining a work that is in violation of this division or threatens the successful execution, functioning or operation of an adopted plan of flood control. The notice must state the acts or omissions which the General Manager believes to be in violation of this division or threatens the successful execution, functioning or operation of an adopted plan of flood control. The notice must specify the statutes or regulations which the respondent is alleged to have violated. This notice must be accompanied by an order requiring the respondent to respond to the notice within thirty (30) days of the receipt of the notice. The notice and the order must state that the board may seek judicial enforcement should the respondent fail to respond to the notice in a timely manner and that the board may abate violations or threats to the adopted plan of flood control through actions identified in section 22(b).~~

~~(b) Other interested parties may become parties to an enforcement proceeding by filing a notice to that effect with the board. The board shall mail acopy of that notice to the respondent within ten (10) days of receipt.~~

~~(c) Notwithstanding subdivision (a), if there is work that has not been approved by the board, the General Manager or the Chief Engineer may issue an order for compliance with *this* division, including an order to stop work.~~

~~NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8596, 8608, 8710 and 8719, Water Code.~~

~~HISTORY~~

~~1. New article 4 (sections 20 through 22) and section filed 9-30-96; operative 10-30-96 (Register 96, No. 40). For prior history, see Register 85, No. 26.~~

~~§ 21. Hearing.~~

~~(a) The respondent shall have the opportunity for a hearing, which must be requested in the respondent's timely response to the notice of enforcement proceeding. Failure to file such response within thirty (30) days of receipt of the notice constitutes a waiver of respondent's right to a hearing.~~

~~(b) The respondent and other parties may request that the board provide a copy of any document, not exempt from disclosure under the Public Records Act, beginning at Government Code section 6521, that is relevant to the enforcement proceedings. The board may charge a reasonable fee for each copy.~~

~~(c) The board may hold the hearing or a partial hearing before a committee of one or more members of the board, or before the General Manager or Chief Engineer, at any place within the state. All hearings must be open to the public. The board President shall designate the hearing officer.~~

~~(d) Written notice of the hearing shall be mailed to the respondent and each other party at least ten (10) days prior to the date of the hearing.~~

~~(e) Respondents and other parties shall be mailed a copy of any staff report or recommendations on the enforcement proceedings at least ten (10) days prior to the hearing.~~

~~(f) The hearing officer shall take and make a record of the evidence. The hearing officer shall prepare a proposed decision based upon the record. At a minimum, record must include the following: (1) the notice of enforcement proceeding and all supplementary material; (2) any staff report or analysis; (3) comments or documents submitted by the respondent, protestants, any public agency, or other third person; and (4) the transcript of the hearing.~~

~~NOTE: Authority cited: Section 8571, Water Code. Reference: sections 8596,~~

~~8608, 8710, 8719, 8730, 8730.2, 8730.3, 8731, 8732, 8732.5 and 8733, Water Code.~~

~~HISTORY~~

~~1. New section filed 9-30-96; operative 10-30-96 (Register 96, No. 40). For prior history, see Register 69, No. 25.~~

~~§ 22. Board Decision.~~

~~(a) The hearing officer shall prepare the proposed decision within thirty (30) days after the conclusion of the enforcement hearing. The board shall adopt its final decision at the next regularly scheduled board meeting after issuance of the proposed decision.~~

~~(b) The board decision shall by order specify what action must be taken by the respondent, at respondent's cost, and the time within which such action must be taken. The required action may include, but is not limited to the following:~~

- ~~(1) Removal of the work;~~
- ~~(2) Alteration of the work;~~
- ~~(3) Performance of additional work;~~
- ~~(4) Implementation of specified mitigation for effects on the environment;~~
- ~~(5) Compliance with additional reasonable conditions;~~
- ~~(6) Filing an application for a permit pursuant to this division;~~
- ~~(7) Revocation of the permit.~~

~~The board decision may also give notice that if the respondent does not comply with the decision within a reasonable time, the board may take actions to abate violations or threats to the adopted plan of flood control, such as physical removal and recover its costs from the respondent.~~

~~(c) The conditions imposed pursuant to subdivision (b) may require the respondent to permit inspection by the board, its officers, staff, or authorized representatives of the department during and after construction.~~

~~(d) The conditions may require the respondent to file with the board reports and data, including a description of all work done under the approved application. The board may also request in writing at any time any reports or data, even if not expressly stated in a condition to the decision.~~

~~NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 21002 and 21081, Public Resources Code; Sections 8608 and 8710, Water Code.~~

~~HISTORY~~

~~1. Renumbering of old section 22 to new section 16(d) and new section filed 9-30-96; operative 10-30-96 (Register 96, No. 40).~~

~~Article 4.1. Reconsideration~~

~~§ 23. Reconsideration.~~

~~(a) No later than thirty (30) days after adoption by the board of a decision or order, any interested person affected by the decision or order may petition the board for reconsideration of the matter for any of the following causes:~~

- ~~(1) Irregularity in the proceeding, or any ruling, or abuse of discretion which prevented a fair hearing;~~
- ~~(2) The decision or order is not supported by substantial evidence;~~
- ~~(3) There is relevant evidence, which could not have reasonably been produced previously;~~
- ~~(4) Error in law;~~
- ~~(5) The application or matter, upon a vote of the Board, failed to be approved, and;~~

~~(A) There were one or more members of the board absent from the proceedings at the time the application or matter was considered and voted upon, except that absences due to abstention shall not be counted; and~~

~~(B) The number of votes by which the application or matter failed to be approved is equal to or less than the number of board members that were absent.~~

~~(b) The petition for reconsideration shall be in writing and contain the following:~~

- ~~(1) Name and address of petitioner;~~
- ~~(2) The specific action of which petitioner requests reconsideration;~~
- ~~(3) The specific reason the action was inappropriate or improper;~~
- ~~(4) The specific action which the petitioner requests;~~
- ~~(5) A statement that copies of the petition and accompanying material have been sent to all interested parties.~~

~~(c) The board may:~~

~~(1) Refuse to reconsider the decision or order if the petition fails to raise substantial issues related to the criteria set forth in subdivision (a);~~
~~or~~

~~(2) After review of the record and the petition:~~

- ~~(A) Deny the petition upon finding that the decision or order was proper;~~
- ~~(B) Set aside or modify the decision or order; or~~
- ~~(C) Take other appropriate action.~~

~~NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8598, 8608 and 8710, Water Code.~~

~~HISTORY~~

~~1. New article 4.1 (section 23) and section filed 9-30-96; operative 10-30-96 (Register 96, No. 40). For prior history, see Register 85, No. 26.~~

STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821

DIVISION 1, CHAPTER 1, ARTICLE 4.1, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING ENFORCEMENT ACTIONS

Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Delete Article 4.1 in its entirety:

CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS

Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 4.1 Reconsideration

~~Article 4.1. Reconsideration~~

~~§ 23. Reconsideration.~~

~~(a) No later than thirty (30) days after adoption by the board of a decision or order, any interested person affected by the decision or order may petition the board for reconsideration of the matter for any of the following causes:~~

- ~~(1) Irregularity in the proceeding, or any ruling, or abuse of discretion which prevented a fair hearing;~~
- ~~(2) The decision or order is not supported by substantial evidence;~~
- ~~(3) There is relevant evidence, which could not have reasonably been produced previously;~~
- ~~(4) Error in law;~~
- ~~(5) The application or matter, upon a vote of the Board, failed to be approved, and;~~

~~(A) There were one or more members of the board absent from the proceedings at the time the application or matter was considered and voted upon, except that absences due to abstention shall not be counted; and~~

~~(B) The number of votes by which the application or matter failed to be approved is equal to or less than the number of board members that were absent.~~

~~(b) The petition for reconsideration shall be in writing and contain the following:~~

- ~~(1) Name and address of petitioner;~~
- ~~(2) The specific action of which petitioner requests reconsideration;~~
- ~~(3) The specific reason the action was inappropriate or improper;~~
- ~~(4) The specific action which the petitioner requests;~~
- ~~(5) A statement that copies of the petition and accompanying material have been sent to all interested parties.~~

~~(c) The board may:~~

~~(1) Refuse to reconsider the decision or order if the petition fails to raise substantial issues related to the criteria set forth in subdivision (a);~~
~~or~~

~~(2) After review of the record and the petition:~~

~~(A) Deny the petition upon finding that the decision or order was proper;~~

~~(B) Set aside or modify the decision or order; or~~

~~(C) Take other appropriate action.~~